UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,036	01/11/2001	Christian Hentschel	PHNL 010002	2194

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EXAMINER
OPIE, GEORGE L

ART UNIT	PAPER NUMBER
2194	

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will
  be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this
  communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1) _X_ Responsive to communication(s) filed on _18 November 2005_ .

2a) ___ This action is **FINAL**.　　　　2b) _X_ This action is non-final.

3) ___ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) _X_ Claim(s) _1-20_ is/are pending in the application.

　　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ___ Claim(s) _____ is/are allowed.

6) _X_ Claim(s) _1-20_ is/are rejected.

7) ___ Claim(s) _____ is/are objected to.

8) ___ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ___ The specification is objected to by the Examiner.

10) ___ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ___ The proposed drawing correction filed on _____ is: a) ___ approved b) ___ disapproved.

12) ___ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)_ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

　　a) ___ All b) ___ Some * c) ___ None of the CERTIFIED copies of the priority documents have been: ·

　　　　1. ___ received.

　　　　2. ___ received in Application No. (Series Code / Serial Number) _____.

　　　　3. ___ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

14) ___　Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

14) _X_ Notice of References Cited (PTO-892)
15) ___ Notice of Draftsperson's Patent Drawing Review (PTO-948)
16) ___ Information Disclosure Statement(s) (PTO-1449) _____.

17) ___ Interview Summary (PTO-413) Paper No(s). _____.
18) ___ Notice of Informal Patent Application (PTO-152)
19) ___ Other:

DETAILED ACTION

This Office Action vacates the previous rejection.

1.   Request for copy of Applicant's response on floppy disk:
Please help expedite the prosecution of this application by including, along with
your amendment response in paper form, an electronic file copy in WordPerfect,
Microsoft Word, or in ASCII text format on <u>a 3½ inch IBM format floppy disk</u>.
Please include all pending claims along with your responsive remarks. Only the
paper copy will be entered -- your floppy disk file will be considered a duplicate
copy. Signatures are not required on the disk copy. The floppy disk copy is not
mandatory, however, it will help expedite the processing of your application.
Your cooperation is appreciated.

2.   Claim Rejections - 35 U.S.C. § 103

        The following is a quotation of 35 U.S.C. 103(a) which forms the basis for
all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed
or described as set forth in section 102 of this title, if the differences between the
subject matter sought to be patented and the prior art are such that the subject
matter as a whole would have been obvious at the time the invention was made
to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was
made.

3.   Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable
over Webb et al. (U.S. 6,151,018) in view of Ahuja et al. (U.S. Patent 6,041,307).

As to claim 9, Webb teaches the invention substantially as claimed including an
algorithm wherein the algorithm comprises a first function and a second function
(see abstract), the system comprising:

function means conceived to contain the first function of the algorithm and a
second function of the algorithm (col.3, line 65-col.4, line 13), and

lookup means (see fig.6) conceived to contain a plurality of output quality levels
that can be provided by the algorithm, a first plurality of quality level settings of
the first function and a second plurality of quality level settings of the second
function (col.3, lines 47-63); and

assigning a first quality level of the first plurality of quality levels to the first
function and assigning a second quality level of the second plurality of quality

levels to the second function based on the output quality level (col.4, lines 13-42).

Webb does not explicitly disclose allocating a budget to the algorithm.

Ahuja teaches allocating a budget to the algorithm (manager 140 determines the appropriate pricing strategy at that time and the algorithm reflecting such a strategy, col. Col. 4 1-7).
It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Ahuja's teachings with Webb because the "rationing services provided in a network by price", col. 1, lines 54-57 would provide a systematic function for efficaciously distributing the finite resources in support of Webb's video service.

As to claim 10, Webb teaches at least one output quality level of the plurality of output quality levels can be provided by the algorithm for at least one first quality level setting of the first plurality of quality level settings and at least one second quality level setting of the second plurality of quality level settings (col.3, lines 30-46).

As to claim 11, Webb teaches a complexity means conceived to contain a plurality of levels of complexity of operation for the at least one first quality level setting (col.3, lines 13-22).

As to claim 12, Webb teaches a hardware configuration means conceived to contain a hardware platform configuration of the system to determine at least the plurality of output quality levels (fig.1 and associated text).

As to claim 13, Webb teaches a software configuration means conceived to contain a software platform configuration of the system to determine at least the plurality of output quality levels (col.4, lines 11-19).

As to claim 16, Webb teaches a television set (5 and 45, fig.1).

As to claim 17, Webb teaches a set-top box (44, fig.1).

As to claim 1, it is directed to a method for presenting the system of claim 9 above and is similarly rejected under the same rationale.

As to claim 2, Webb teaches determining that the first function, while providing the first quality level, can be operated at a plurality of levels of complexity (col.3, lines 30-47).

As to claim 3, Webb teaches operating the algorithm at the output quality level, and operating the first function at the first quality level while consuming a first amount of resources by the first function and operating the second function at the second quality level while consuming a second amount of resources by the second function (col.4, line 50 - col.5, line 13).

As to claim 4, Webb teaches operating the first function at a least complex level of the plurality of levels of complexity (col.3, lines 13-22).

As to claims 5-6, Ahuja teaches the pricing of a "composite service", cl4 l60 – col. 5 line 17 in conjunction with workload measures, cl 3 lns32-47 which reads-on the recited budget/pricing computations for the respective resources.

As to claim 7, Webb teaches determining a hardware platform operating the method to determine the algorithm resource and the plurality of output quality levels (fig.1 and associated text).

As to claim 8, Webb teaches determining a software platform operating the method to determine the algorithm resource and the plurality of output quality levels (col.4, lines 6-13).

As to claim 14, Webb teaches a computer program product (col.2, lines 43-50).

As to claim 15, Webb teaches a storage device (col.7, lines 4-7).

As to claim 18, the rejection of claim 9 above is incorporated herein in full. Additionally, Webb further teaches at least one memory (col.7, line 5) and at least one processor (51, fig.5).

As to claim 19, Webb teaches storing a hardware configuration file containing a hardware platform configuration of the system, the plurality of output quality levels based at least partially on the hardware configuration file (see fig.57 and the associated text).

As to claim 20, Webb teaches storing a software configuration file containing a software platform configuration of the system, the plurality of output quality levels based at least partially on the software configuration file (col.3, lines 64-col.4, line 27).

4.   The prior art made of record, listed on PTO 892 provided to Applicant is considered to have relevancy to the claimed invention. Applicant should review each identified reference carefully before responding to this office action to properly advance the case in light of the prior art.

5.   Response to Applicant's Remarks

Applicant's arguments filed 18 November 2005 have been considered but are moot in view of the new grounds of rejection.

During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969)

Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir.. 2003). claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily. (see *Prater supra at 1404-05, 550-551*).
  See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (1989) "During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.".

Applicant should set forth claims in language that clearly, distinctly, unambiguously and uniquely define the invention.

Contact Information:

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private-PAIR or Public-PAIR.

Status information for unpublished applications is available through Private-PAIR only.

For more information about the PAIR system, see   http://pair-direct.uspto.gov.

Should you have questions regarding access to the PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

All responses sent by U.S. Mail should be mailed to:
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Hand carried responses should be delivered to the *Customer Service Window* (Randolph Building, 401 Dulany Street, Alexandria, Virginia 22314) and, if submitting an electronic copy on floppy or CD, to expedite its processing, please notify the below identified examiner prior to delivery, so that the Applicant can "handoff" the electronic copy directly to the examiner.

The Official fax number (571) 273-8300 should be used for any and all facsimile submissions to the Office.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist at **(571) 272-2100.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Opie at (571) 272-3766 or via e-mail at *George.Opie@uspto.gov.* Internet e-mail should not be used where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the Applicant. Sensitive data includes confidential information related to patent applications.

WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER